

## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Centers for Medicare and Medicaid Services

7500 Security Boulevard  
Baltimore, MD 21244-1850

MAR 17 2002

Ms. Phyllis J. Dube, Secretary  
State of Wisconsin  
Department of Health and Family Services  
1 West Wilson Street  
P.O. Box 7850  
Madison, Wisconsin 53707-7850

Dear Secretary Dube:

I am responding to your letter to Secretary Thompson in which you asked for assistance in determining the applicability of the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to a number of Wisconsin health programs that receive federal funding. I am sorry for the long delay in my response.

While the transaction and code set final rule initially defined the term "health plan", the privacy final rule amended that definition in response to comments recommending clarification of the status of certain government programs that pay for health care. Commenters pointed out that in some cases programs pay for "health care", but are not in fact health insurance plans. The privacy rule addressed these comments by adding language to the definition that excluded certain programs (other than those specifically listed in the regulation) from the definition of covered entities. The excluded programs are:

- Programs that provide or pay for the cost of excepted benefits listed in section 2791(c)(1) of the Public Health Service (PHS) Act;
- Government-funded programs whose principal purpose is other than providing, or paying the cost of, health care;
- Government-funded programs whose principal activity is the direct provision of health care or making grants to fund the direct provision of health care.

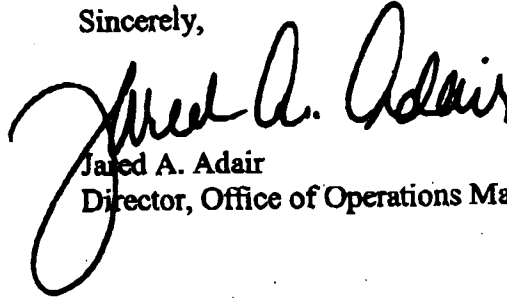
These exclusions necessitate program-by-program analysis to determine the applicability of the HIPAA standards. For each program, knowledge is required of the authorizing statute that established the program, set out its mission, and specified the services it provides and how those services are delivered and funded.

CMS programs (Medicare, Medicaid and the State Children's Insurance Program) are clearly HIPAA covered entities, due to their specific inclusion in the definition of a health plan. Providing a comprehensive list of other covered and noncovered programs will take some time

due to the number of programs and the complexity and diversity of their rules. However, we acknowledge that States' planning activities would be simplified by having Federally-funded programs inform States of their HIPAA covered entity status. We will work with other components within the Department of Health and Human Services and other Departments to review and respond to your initial interpretation of the status of the specific programs in Wisconsin, as well as to explore mechanisms for disseminating this type of information to all States.

I know that Secretary Thompson is committed to facilitating the process of implementing HIPAA standards. If you require any additional information, please contact Karen Trudel at 410-786-9937.

Sincerely,



Jared A. Adair

Director, Office of Operations Management